

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

Commercial Metals Company,	§	CIVIL ACTION NO. 4:10-cv-129
	§	
Plaintiff	§	
	§	
v.	§	
	§	
MV <i>Ocean Luck</i> , <i>in rem</i> , her engines,	§	
tackle, apparel, etc., Kingcrescent Maritime	§	
Ltd., Ocean Longevity Shipping &	§	
Management Co., Ltd., Hyundai Merchant	§	
Marine Co., Ltd., and STX Pan Ocean Co.,	§	PURSUANT TO RULE 9(H), FEDERAL
Ltd., <i>in personam</i> ,	§	RULES OF CIVIL PROCEDURE
	§	
Defendants	§	ADMIRALTY

**PLAINTIFF'S ORIGINAL COMPLAINT**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW Plaintiff, Commercial Metals Company ("CMC"), by and through its undersigned attorneys, complaining of the MV *Ocean Luck*, *in rem*, her engines, tackle, apparel, etc., Kingcrescent Maritime Ltd., Ocean Longevity Shipping & Management Co., Ltd., Hyundai Merchant Marine Co., Ltd., and STX Pan Ocean Co., Ltd., *in personam*, respectfully showing:

**I.**

1.1 This cargo claim presents an admiralty or maritime case within the jurisdiction of the United States and this honorable Court pursuant to Article III, section 2 of the U.S. Constitution, 28 U.S.C. § 1333, and Federal Rule of Civil Procedure 9(h). The *in rem* claim is asserted against the vessel, MV *Ocean Luck*, pursuant to Supplemental Rule C of the Supplemental Rules for Certain Admiralty & Maritime Claims, Federal Rules of Civil Procedure, and the maritime law of the United States.

1.2 Venue is proper pursuant to Rule 82, Fed. R. Civ. P.

## II.

2.1 Plaintiff CMC is a corporation existing under the laws of Delaware, which maintains a place of business in Texas and conducts business in Texas.

## III.

3.1 Defendant *in rem*, MV *Ocean Luck*, is a Hong Kong, China-flag bulk cargo carrier of approximately 20,947 tons, built in 1998. This vessel transported the steel cargo made the subject of this claim from Kohsichang, Thailand, to Houston, Texas.

3.2 Defendant Kingcrescent Maritime Ltd., is a company organized and existing under the laws of a state other than Texas, with its offices located at care of Ocean Longevity Shipping & Management Co., Ltd., Suite 2101, 21<sup>st</sup> Floor, Two International Finance Centre, 8, Finance Street, Central, Hong Kong, China, and upon information and belief, owned the MV *Ocean Luck* at all relevant times. In accordance with the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the “Hague Convention”) to which Hong Kong Special Administrative Region, subscribes, CMC hereby forwards duplicate originals of process with this Complaint, in English, to the Central Authority for Hong Kong, to wit: Chief Secretary for Administration, Hong Kong Special Administrative Region Government, Room 140, East Wing, Central Government Offices, Lower Albert Road, Hong Kong, for service on Defendant Kingcrescent Maritime Ltd., at its home office located at care of Ocean Longevity Shipping & Management Co., Ltd., Suite 2101, 21<sup>st</sup> Floor, Two International Finance Centre, 8, Finance Street, Central, Hong Kong, China.

3.3 Defendant Ocean Longevity Shipping & Management Co., Ltd., is a company organized and existing under the laws of a state other than Texas, with its offices located at Suite 2101, 21<sup>st</sup> Floor, Two International Finance Centre, 8, Finance Street, Central, Hong Kong, China, and upon information and belief, managed the MV *Ocean Luck* at all relevant times. In accordance with the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the “Hague Convention”) to which Hong Kong Special Administrative Region, subscribes, CMC hereby forwards duplicate originals of process with this Complaint, in English, to the Central Authority for Hong Kong, to wit: Chief Secretary for Administration, Hong Kong Special Administrative Region Government, Room 140, East Wing, Central Government Offices, Lower Albert Road, Hong Kong, for service on Defendant, Ocean Longevity Shipping & Management Co., Ltd., at its home office located Suite 2101, 21<sup>st</sup> Floor, Two International Finance Centre, 8, Finance Street, Central, Hong Kong, China.

3.4 Defendant Hyundai Merchant Marine Co., Ltd., is a company organized and existing under the laws of a state other than New York, and, upon information and belief, was a charterer of the MV *Ocean Luck*, at all relevant times, or otherwise the carrier of goods onboard that vessel, and, upon information and belief, re-let the cargo to Defendant STX Pan Ocean Co., Ltd. In accordance with the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the “Hague Convention”), Plaintiff hereby forwards duplicate originals of process with this Complaint, translated into Korean, to the Central Authority for South Korea, to wit: National Court Administration, ATTN: Director of International Affairs, 967, Seocho-dong, Seocho-gu, Seoul 137-750, South Korea for service on Defendant Hyundai Merchant Marine Co., Ltd., at its home office located at 66, Chokson-dong, Jongro-ku, Seoul 110-052, South Korea.

3.5 Defendant *in personam*, STX Pan Ocean Co., Ltd., is a company organized and existing under the laws of a state other than Texas, with its offices located at STX Namsan Tower, 631, Namdaemun-no 5-ga, Jung-gu, Seoul 100-803, South Korea, and upon information and belief, was a charterer of the MV *Ocean Luck*, at all relevant times, or otherwise the carrier of goods onboard that vessel, and, upon information and belief, accepted or agreed to carry cargo onboard the vessel, as re-let by Defendant Hyundai Merchant Marine Co., Ltd. In accordance with the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the “Hague Convention”) to which South Korea subscribes, CMC hereby forwards duplicate originals of process with this Complaint, translated into Korean, to the Central Authority for South Korea, to wit: National Court Administration, ATTN: Director of International Affairs, 967, Seocho-dong, Seocho-gu, Seoul 137-750, South Korea for service on Defendant STX Pan Ocean Co., Ltd., at its home office located at STX Namsan Tower, 631, Namdaemun-no 5-ga, Jung-gu, Seoul 100-803, South Korea.

#### IV.

4.1 On or about October 31, 2008, cargos of steel products, including cold-formed welded steel square and rectangular tubing, were delivered in good order and condition to the MV *Ocean Luck* in Koshichang, Thailand, to be transported by sea on the MV *Ocean Luck* to the port of Houston, Texas. The owners and /or charterers of the vessel, or the carriers, issued bills of lading numbers HDMUKOOHT8040153, HDMUKOOHT8040154 and HDMUKOOHT8040155, dated October 21, 2008, covering the aforementioned cargo of steel products, all of which moved under the issued bills of lading, or other contracts between the parties, or other agreements between the Defendants, to which CMC may or may not have been a party.

**V.**

5.1 The above-referenced shipments of steel cargo were delivered to the MV *Ocean Luck* in good order and condition. Said cargo, however, arrived in the Houston, Texas, in a damaged and deteriorated condition, including but not limited to seawater contamination, rusting, shortage, physical damage. The damage to the aforementioned cargo arising during shipment on the MV *Ocean Luck* gives rise to a maritime lien in favor of cargo's interests which CMC hereby asserts against the MV *Ocean Luck*, *in rem*, and gives rise to a claim for damages against Defendants *in personam*.

**VI.**

6.1 The damage, delay and shortage to the cargo was the direct and proximate result of the acts or failure to act of the Defendants herein, which constitute negligence, breach of contract or contracts of carriage, breach of contract of bailment, unseaworthiness, deviation and/or breach of the implied and/or express warranties on the part of the Defendants while the cargo was in the Defendants' care, custody, and/or control.

**VII.**

7.1 By virtue of the aforementioned damages, CMC has suffered a loss of at least \$37,000, plus interest and costs, for which sum CMC brings this action and enforces its maritime lien on the MV *Ocean Luck*, *in rem*, and against the Defendants *in personam*.

**VIII.**

8.1 In addition to the aforementioned damages, Plaintiff CMC hereby demands statutory attorneys' fees as allowed by section 38.001 of the Texas Civil Practice and Remedies Code, Texas

state law, and applicable maritime law. Reasonable attorneys' fees in this matter are presently estimated to be in an amount of at least \$12,000.

**IX.**

9.1 CMC was the shipper, consignee, or owner of the shipment of steel cargo described herein, and brings this action on behalf of, and for the interest of all parties who may be, or may become, interested in such shipment as their respective interests may appear. CMC is entitled to maintain this action and has standing to so assert.

9.2 If any charterparty, booking note, bill of lading or other contract of carriage legally obligates CMC to arbitrate all or any part(s) of the disputes or matters arising herein, then Plaintiff hereby presents notice of claim and demand for relief at arbitration in the forum required.

WHEREFORE PREMISES CONSIDERED, Plaintiff CMC prays that its maritime lien and claims against MV *Ocean Luck*, be enforced and effectuated, and that Defendants *in personam* be cited to appear and answer herein, and that upon final hearing of all claims, CMC have and recover judgment against all aforesaid Defendants in an amount equal to its losses, damages, and disbursements, together with reasonable and necessary attorneys' fees, plus interest at the legal rate until paid, and all costs of court. Plaintiff CMC prays for all such further relief, both general and special, at law or in equity, to which CMC may be justly entitled.

Respectfully submitted,

/s/ David S. Toy

David S. Toy

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